

Burden of Proof

I. Introduction.

This statement and the attached documents support the application of Terrence Allen Chavis Jr to the Board of Zoning Adjustment for the Property known as 119 53rd St NE, IN Square 5243, Lot 0149 (hereinafter, the "**Property**"). The Property is located in Ward 7, ANC 7C02, and zoned as R-2. This use variance will facilitate the development of a vacant lot, in a residential area to a multi-family unit/apartment house, providing housing for eight (8) families, resulting in more residential accommodations than currently offered at the Property.

II. Nature of Relief Sought

As a new multi-family residential development, the Project requires a use variance pursuant to Section U-201.1 and Subtitle X Section 1000 of the D.C. Zoning Regulations to develop a multi-family residential unit that does not permit apartment houses. The Applicant is also requesting the following additional relief:

- a. 45% of lot occupancy in the R-2 zone instead of 40% maximum in accordance with Section 304.
- b. Rear yard of 16 instead of 20 feet minimum per section 306.
- c. Some of the side yard are below the 8 feet minimum in accordance with section 307.
- d. The project design matches the surroundings by having a gabled dormer instead of the additional penthouse setback.
- e. A special exception under Subtitle C § 703.2(a) Two parking spots for 8 unit building instead of the three spots required under R-2

III. Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X Section 900.1 and Section 1000.1 of the Zoning Regulations.

IV. Description of the Property and Surrounding Area

A. Description of the Property

The Property is zoned R-2 and is a vacant corner lot on 53rd St NE, adjacent to Blaine Street NE, resulting in a large right of way for the Property. In addition, the vacant lot has access to a 15ft public alley, allowing easy entry to the parking via the alley. There is also an existing sidewalk for pedestrians to commute safely.

B. Description of the Surrounding Area

The Property is located near single-family attached and semi-attached row houses on the block of Blaine Street NE. Kipp DC Public Charter School is directly across the street from the lot. In addition, some single-family properties have been converted to walkup apartments. Benning Road Metro Station is less than 1 mile from the Property. Kelly Miller Recreation Center and the pool are mere .3 miles from the Property.

V. Proposed Project Description

The Applicant proposes to develop an eight-unit multi-family residential unit on a vacant, undeveloped lot. Each unit will consist of two (2) bedrooms and one (1) bathroom, and approximately 925 square feet (the "Project"). The Project features

balconies for each of the above-grad units, plus landscaping and green space at the street level and a common roof deck for all residents of the Property.

The Building would be 37.9 feet, three stories, and have a common roof deck. The entrance to the Building would be from the side of the Building on an existing sidewalk via Blaine Street. Car and Pedal parking will be provided in the rear of the Building via a public alley. The public alley can be accessed via Ames Street or Blaine Street.

Current Zone R-2	Regulation	Proposed	Relief
Apartment houses not permitted	Matter of Right Uses in R-@ U §201	Apartment house/Multi-family unit	Use Variance Required
Lot Occupancy 40% max	Lot Occupancy §304	45%	Use Variance Required
Rear Yard 20ft min	Rear Yard §306	16 ft minimum	Area Variance Required
Side Yard 8ft min	Side yard §307	None to 9 feet	Area Variance Required
Penthouse Height 12ft max.	Penthouse C §201	None	Area Variance Required
Parking 3 min spaces	Parking C §201	2 parking spaces	Area Variance Required

The Project complies with all other zoning requirements.

VI. The Application Satisfies the Requirements for Variance Relief

The Applicant seeks six variances: two (2) use variances and four (4) area variances. The burden of proof for an area variance is well established. The Applicant must demonstrate three elements:

1. unique physical aspect or other extraordinary or exceptional situation or condition of the Property;
2. resulting in practical difficulty in complying with a strict application of the Zoning Regulations; and
3. no harm to the public good or the zone plan.

See Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).

Accordingly, the Applicant sets forth the reasons below the three-part test for *Gilmartin* is met for the requested area variance.

A. Exceptional Situation Resulting in an Undue Hardship

In order to prove an extraordinary or exceptional condition or uniqueness, the Applicant must show that the Property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* at 1098. This particular Property has remained vacant for over 50 (fifty) years since the last zoning request filed in 1971, which was denied.

The Applicant seeks to serve the missing middle and will be marketed as such. Www.missingmiddle.com defines this as "house-scale buildings with multiple units—

compatible in scale and form with detached single-family homes—located in a walkable neighborhood. "The Applicant and the project designers have endeavored to make a compatible "house-scale" form using the unique site topography and traditional architectural features of typical D.C. residential development.

As the Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), that variance use can arise from a "confluence of factors." that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the Property. Instead, it may arise from a "confluence of factors." b. The site's topography is a "unique physical aspect" of the site. The Building for this Project is separate from other adjacent buildings on three (3) of four (4) sides of the Property by at least 40 feet and as much as 115 feet in some areas.

This lot is in a unique position as it is located on the corner of an R-2 zone, and by merely walking across the street, you are in an RA-1 zone. The unique physical aspect of the Property has prevented the development of the Property in an area that needs affordable housing. On the other side of the street is a newly renovated school. The Building can be sited several feet lower (downhill) than its immediate neighbor to the south (semi-detached rowhomes at 115-117 53rd Street NE), resulting in a building height within the range of the neighboring structures.

In combination, all the factors above contribute to the Property being burdened by an exceptional condition. Therefore, this application satisfies Gilmartin's first prong of the variance test.

B. Strict Application of the Zoning Regulations Results in a Particular Difficulty as a Result of the Exceptional Conditions Affecting the Property

It is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty.'" Gilmartin, 579 A.2d at 1711. Additionally, the BZA may consider "the severity of the variances requested and weight that request against the burden of strict compliance, and the effect the proposed variances would have on the overall zoning plan.

The use variance to build an apartment house in the R-2 zone is not against the overall zoning plan. This residential Project has apartment houses in the R-1 zone immediately across the street.

The lot occupancy variance is 5% more than the acceptable use in R-2, and it will provide housing to seven additional families than a single-family home can provide in an underdeveloped area in need of affordable housing.

The rear yard is a mere 4ft less than the zoning requirement. The side yard exceeds the eight (8) feet minimum requirement on most of the south side of the yard; as viewed from the 53rd Street sidewalk, the side setback is seven (7) feet minimum and (9) feet maximum in a small area to match the pattern of a typical rowhouse. To account for this angled Property, the Building design decreases the side setback towards the East, which gains critical floor area for the Project. The design was careful to decrease the floor area towards the alley, where it would least affect the neighborhood design. This is necessary because of the angle of the Property. The Project will provide the required front yard (plus allowable projections), have a rooftop deck, and be within walking distance of the recreation center.

The Penthouse height is below requirements on three (3) of four (4) sides, but that is a specific choice to allow the Property to naturally blend in with the traditional

single-family homes in the area by providing a classic center hall. It further provides a roof over the stairs to the common roof deck for more outdoor space for the Property's residents. Although the setback requirement for the penthouse is not met at the front on Blaine Street, it is well below it on the front, back, and south facing areas. The front entrance feature along Blaine Street NE is designed as a classic "center hall" dormer, characteristic of traditional single-family homes in the area. The relief requested would result in a visually less intrusive roof structure. The building height is 40 feet and is specifically designed to blend in with the surrounding properties.

The Property is just one parking spot short of the requirement for the zone. However, it provides three (3) bicycle parking spots. The one parking spot will not impact the area because parking is not currently an issue; it is within walking distance of Benning Road metro and approximately a 5-minute walk to the U5 and W4 bus lines.

C. Relief can be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the zone plan as embodied in the Zoning Regulations and Map.

The R-2 zone intends to provide for areas predominantly developed with semi-detached houses on moderately sized lots and also obtain some detached dwellings. However, for this Project, the Property is adjacent to an RA-1 zone, and the apartment house has an intentional design to help transition from the single-family zone (R-2) setback requirements to the denser RA-1 zone across the street.

Currently, several moderate-density walkup apartments infringe on the landscape of single-family detached and semi-detached homes and more significant institutional buildings (schools and churches) near the Property.

The requested variance relief would result in the development of a property that has remained undeveloped despite the changes in the neighborhood and the need for affordable housing.

VII. Conclusion

This application satisfies the regulatory requirements for variance relief, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

/s/Lucrecia P. Johnson
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